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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CREIGHTON TAKATA, Individually and on
behalf of all others similarly situated,

Plaintiff,

v.

RIOT BLOCKCHAIN, INC. F/K/A
BIOPTIX, INC., JOHN O'ROUKE, and
JEFFREY G. MCGONEGAL

Defendants.

Case No. 18-cv-2293 (FLW) (TJB)

**REQUEST FOR JUDICIAL NOTICE
SUPPORTING BARRY C. HONIG'S
MOTION TO DISMISS**

Defendant Barry C. Honig ("Mr. Honig") respectfully requests that the Court take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of certain documents cited in his Memorandum in Support of his Motion to Dismiss Lead Plaintiffs' Corrected Consolidated Amended Class Action Complaint (the "**Complaint**"). Each of the referenced documents is attached to the accompanying Declaration of Robert D. Weber ("**Weber Decl.**").

Pursuant to Federal Rule of Evidence 201(b)(2), this Court may take judicial notice of facts that are "not subject to reasonable dispute" and that are "capable of accurate and ready

determination by resort to sources whose accuracy cannot reasonably be questioned.” Under Federal Rule of Evidence 201(d), this Court must take judicial notice “if requested by a party and supplied with the necessary information.”

1. The Court May Take Judicial Notice of SEC Filings.

Mr. Honig requests that the Court take judicial notice of the following documents that were filed with the Securities Exchange Commission (“**SEC**”) and uploaded to the SEC EDGAR database:

- Venaxis, Inc.’s (“**Venaxis**”) Annual Report on Form 10-K for the year ended December 31, 2015, filed with the SEC on March 23, 2016. (Weber Decl. Ex. A);
- Venaxis’s Form 10-Q for the quarterly period ended June 30, 2016, filed with the SEC on August 10, 2016 (Weber Decl. Ex. B);
- Riot Blockchain’s (“**Riot**”) current report on Form 8-K, filed with the SEC on November 3, 2017 (Weber Decl. Ex. C);
- Riot’s Form 10-Q for the quarterly period ended Sept. 30, 2017, filed with the SEC on November 13, 2017 (Weber Decl. Ex. E);
- Schedule 13 D/A filed by Mr. Honig with the SEC on January 4, 2017 (Weber Decl. Ex. F);
- Proxy Statement Pursuant to Section 14(a) of BiOptix, Inc. (“**BiOptix**”) filed with the SEC on July 10, 2017 (Weber Decl. Ex. G);
- BiOptix’s Registration Statement on Form S-3/A filed with the SEC on September 25, 2017 (Weber Decl. Ex. H);
- Riot’s Annual Report on Form 10-K for the year ended December 31, 2017, filed with the SEC on April 17, 2018 (Weber Decl. Ex. I);

- Riot's current report on Form 8-K, filed with the SEC on November 16, 2017 (Weber Decl. Ex. J);
- Riot's Form 10-Q for the quarterly period ended Sept. 30, 2018, filed with the SEC on November 19, 2018 (Weber Decl. Ex. K); and,
- Riot's current report on Form 8-K, filed with the SEC on January 20, 2017 (Weber Decl. Ex. O).

As noted above, several of these SEC filings are cited in, or quoted by, the Complaint. On a motion to dismiss, courts may consider documents "integral to or explicitly relied upon in the complaint." *See In re NAHC, Inc. Securities Litig.*, 306 F.3d 1314, 1331 (3d Cir. 2002) *citing In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997). Even when not specifically cited in a complaint, Courts routinely take judicial notice of SEC filings because their contents are inherently reliable. *See In re NAHC*, 306 F.3d at 1331, *citing Oran v. Stafford*, 226 F.3d 275, 289 (3d Cir. 2000) (taking judicial notice of public disclosure documents filed with SEC).

2. The Court May Take Judicial Notice of Historical Securities Prices.

Mr. Honig also requests that the Court take judicial notice of the following documents:

- A price chart showing the historical market prices of Riot common stock (including when Riot operated under the names Venaxis and BiOptix), for the dates June 30, 2016 through September 6, 2018, downloaded from <https://www.nasdaq.com/> on March 14, 2019 (Weber Decl. Ex. D);
- A chart reflecting historical Bitcoin prices (BTCUSD) for the period June 30, 2016 through September 6, 2018, downloaded from <https://finance.yahoo.com/> on March 15, 2019 (Weber Decl. Ex. L);

- Visual line chart representing a comparison of the price of Riot stock (represented by the red line) and Bitcoin (represented by the blue line) for the period October 3, 2017 through September 6, 2018, downloaded from www.barchart.com on March 15, 2019 (Weber Decl. Ex. M); and
- A visual line chart representing a comparison of the price of Bitcoin (represented by the blue line), Grayscale Bitcoin Trust common stock (represented by the green line), and Overstock common stock (represented by the purple line) for the period October 3, 2017 through September 6, 2018, downloaded from www.barchart.com on March 15, 2019 (Weber Decl. Ex. N).

Courts often taken judicial notice of historical reported market prices of securities in connection with motions to dismiss. *See e.g., In re NAHC*, 306 F.3d 1314 at 1331 (finding no reversible error where district court took judicial notice of stock prices compiled by the Dow Jones news service); *Ieradi v. Mylan Lab., Inc.*, 230 F.3d 594, 600 n. 3 (3d Cir. 2000) (taking judicial notice of stock prices reported by Quotron Chart Services).

Dated: September 5, 2019

Respectfully submitted

/s/ Tyler E. Baker

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